

STATE OF COLORADO

PUBLIC UTILITIES COMMISSION

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Department of Regulatory Agencies

Joseph A. Garcia
Executive Director

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Roy Romer
Governor

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SEP 15 1998

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September 11, 1998

Federal Communications Commission
1919 M Street Northwest
Washington, District of Columbia 20554

Please find attached the Colorado Public Utilities Commission's response to the Federal Communications Commission's request, paragraph 285 of Report and Order, released on September 20, 1996, CC Docket No. 96-128, for a review concerning the provision of public interest payphones in Colorado. As indicated in the FCC's order, the attached review is limited to the Colorado Public Utilities Commission's consideration of public interest payphones.

If you have questions about this review, please contact me.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Bruce N. Smith".

Bruce N. Smith
Director

cc: Common Carrier Bureau, Federal Communications Commission

cc: [unclear] [unclear]
[unclear]

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**REPORT TO THE FEDERAL COMMUNICATIONS COMMISSION
FROM THE COLORADO PUBLIC UTILITIES COMMISSION
WITH REGARD TO
PUBLIC INTEREST PAYPHONES**

SEPTEMBER 20, 1998

INTRODUCTION

In its Report and Order released on September 20, 1996, CC Docket No. 96-128, In the Matter of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, the Federal Communications Commission requested states to provide a review of public interest payphones. In paragraph 285 the Report and Order states:

In furtherance of our statutory responsibility under Section 276(b)(2), we direct each state to review whether it has adequately provided for public interest payphones in a manner consistent with this Report and Order. In particular, each state should evaluate whether it needs to take any measures to ensure that payphones serving important public interests will continue to exist in light of the elimination of subsidies and other competitive provisions established pursuant to Section 276 of the 1996 Act, and that any existing programs are administered and funded consistent with the requirements described above. This review must be completed by each state within two years of the date of issuance of this Report and Order,

This report responds to the Federal Communications Commission's (FCC) request.

COLORADO PUBLIC UTILITIES COMMISSION ACTIONS

Prior to implementing a rulemaking in order to consider changes to the regulation of payphones in Colorado and in order to comply with the Federal Telecommunications Act of 1996, the Staff of the Colorado Public Utilities Commission (COPUC) conducted discussions with payphone providers to receive input. All payphone providers in the State of Colorado were invited to participate in the discussions. On February 26, 1997 many payphone providers attended a meeting chaired by Staff, and at Staff's request many payphone providers made written suggestions about changes to the regulation of payphones. After considering the suggestions, Staff proposed a rulemaking to the

COPUC.

On April 24, 1997 the COPUC issued its Notice of Proposed Rulemaking.¹ The bases and purposes for the rulemaking were:

1. to make the rules applicable in a multi-provider (multi-local exchanges carrier environment, and
2. to make the rules comport with the Federal Communications Commission's requirements concerning payphones.

The COPUC further noted:

The current rules were designed to apply in a monopoly environment instead of a multi-provider environment. In order to clarify the rules in a multi-provider environment, changes are necessary.

The Federal Communications Act of 1996 has preempted certain aspects of Colorado's regulation of payphones. The Federal Communications Commission, in interpreting the Federal Communications Act of 1996 establishes certain requirements for state utility commissions with respect to payphones and "Public Interest Payphones" (Report and Order 96-388 and Order on Reconsideration 96-439.) In order to comply with the preemptions in the Act and to comply with the Federal Communications Commission's requirements, changes to the rules are necessary.

A draft definition of public interest payphones and two alternative draft rules with regard to the availability of public interest payphones were included with the NOPR. The NOPR set a time for hearing and invited parties to provide written and/or oral comments.

Staff of the COPUC; Colorado Telecommunications Association; MCI Telecommunications Corporation, MCIMetro Access Transmission Services, Inc., ICG

¹ Decision C97-427.

TELECOM Group, Inc., and WORLDCOM, Inc.; and U S WEST Communications, Inc. filed written comments and participated in the hearing. The Colorado Office of Consumer Counsel participated in the hearing process.

Hearings were held by Administrative Law Judge William J. Fritzel. On September 15, 1997 the ALJ issued his recommended decision adopting rules and recommending a COPUC policy.²

On October 3, 1997, the COPUC issued a decision staying the ALJ's recommended decision.³ The COPUC stayed the ALJ's decision "on its own motion to allow for Commission review of the recommendation of the ALJ." No exceptions were filed to the ALJ's decision. On November 5, 1997 the COPUC entered an order vacating the stay and affirming the recommended decision in all respects.⁴

THE DECISION

The COPUC decided: (1) to delete an obsolete rule concerning payphones, (2) add a definition to its rules of public interest payphones identical to the definition in FCC Report and Order 96-388, and (3) and adopted a policy about public interest payphones.

As described in the ALJ's recommended decision, the COPUCs policy:

. . . make(s) communities and payphone providers responsible for the placement and provision of public interest payphones without participation by this

² Decision No. R97-939, attached as Appendix A.

³ Decision No. C97-988.

⁴ Decision No. C97-1199.

Commission. This model would encourage communities to contract and compensate payphone providers who locate public interest telephones in the communities. This proposal would involve possible Commission regulation only in the event that complaints were filed against regulated payphone providers. No rule would be required....⁵

The rule and policy described above were adopted by the Commission's order vacating Stay and Adopting Rules.⁶

RESULTS

To the best of the COPUC's ability to track complaints, since the promulgation of the rule and policy described above, the COPUC has received no informal or formal complaints about the availability of payphone service.

⁵ Decision No. R97-939, p 5.

⁶ Decision No. C97-1199.

APPENDIX A

Decision No. R97-939

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 97R-173T

IN THE MATTER OF PROPOSED AMENDMENTS TO THE RULES REGULATING
TELECOMMUNICATIONS SERVICE PROVIDERS AND TELEPHONE UTILITIES,
4 CCR 723-2; AND THE RULES REGULATING OPERATOR SERVICE PROVIDERS,
4 CCR 723-18.

RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
WILLIAM J. FRITZEL
ADOPTING RULES

Mailed Date: September 15, 1997

Appearances:

Roy A. Adkins, Esq., Denver, Colorado, for
Colorado Telecommunications Association;

Richard L. Corbetta, Esq., Denver, Colorado,
for U S WEST Communications, Inc.;

Vicki Mandell, Assistant Attorney General for
the Staff of the Colorado Public Utilities
Commission;

Thomas F. Dixon, Esq., Denver, Colorado, for
MCI Telecommunications Corporation, MCImetro
Access Transmission Services, Inc.; and

Craig D. Joyce, Esq., Denver, Colorado, for
Colorado Payphone Association.

I. STATEMENT

A. On April 24, 1997, the Commission mailed Notice of Proposed Rulemaking concerning proposed amendments to the Rules Regulating Telecommunications Service Providers and Telephone Util-

ities, 4 Code of Colorado Regulations ("CCR") 723-2; and the Rules Regulating Operator Service Providers, 4 CCR 723-18.

B. On April 29, 1997, the Commission gave Notice of Proposed Rulemaking to the Office of Regulatory Reform and the Colorado Secretary of State. The Commission requested publication of the proposed rules in *The Colorado Register*.

C. Comments were filed by the Colorado Public Utilities Commission ("Staff"); the Colorado Telecommunications Association ("CTA"); MCI Telecommunications Corporation, MCImetro Access Transmission Services, Inc., AT&T Communications of the Mountain States, Inc., Telecom Group, Inc., TCG Colorado, and Worldcom, Inc. ("MCI Et Al."); the Colorado Payphone Association ("CPA"); and U S WEST Communications, Inc. ("U S WEST").

D. The hearing was held as scheduled on August 4, 1997.

E. Pursuant to § 40-6-109, C.R.S., the record of this proceeding along with a written recommended decision are transmitted to the Commission.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. This rulemaking proceeding concerns proposed amendments to the Rules Regulating Telecommunications Service Providers and Telephone Utilities, 4 CCR 723-2: Rule 2, Interpretational Definitions for Rules; Rule 17, Basic Telephone Service Standard; and Rule 23, Availability of Public Interest Payphones. In addition, the Commission in its notice, stated that it would consider

potential modifications to the Commission's regulations concerning payphones, including inmate phones, in order to comport with provisions in the Federal Telecommunications Act of 1996. The Commission indicated that it would consider deleting a portion of the Rules Regulating Operator Services for Telecommunications Service Providers and Telephone Utilities, 4 CCR 723-18. The proposed deletion would apply to Rule 3.1.3, Non-Optional Services (4 CCR 723-18-3). The Commission also indicated that it would consider designating all payphone services, Part 4 Deregulated Services pursuant to § 40-15-401, et seq., C.R.S., based on the Federal Communications Act of 1996, and Federal Communications Commission ("FCC") orders.

B. The proposed addition to 4 CCR 723-2-2 would add a definition of public interest payphone, identical to the definition adopted by the FCC in its Report and Order 96-388 and in its Order on Reconsideration, 96-439. It is proposed that the definition would be added to the rule as 4 CCR 723-2-2.48. Some of the commentors stated that it was appropriate to add the definition, while others indicated that it was unnecessary to add it to the Commission rules since it is contained in the FCC Report and Order. CTA commented that the definition should not be placed at 2.48 but rather at 2.37. Staff in its reply comments agreed that it is appropriate to place the definition at 2.37 instead of 2.48. MCI ET AL. commented that this proposal, as well as the

other proposed modifications, are premature and should not be adopted but rather the Commission should undertake an investigation of the matter. It is found that the definition of Public Interest Payphone should replace the current definition of Public Telephone Service at 2.37.

C. Proposed Rule 4 CCR 723-2-17.1.9 would add public interest payphones to the definition of basic service. Staff in its initial comments supported the addition of public interest payphones to the basic telephone service standard of 4 CCR 723-2-17. However, in its reply comments, it stated that upon reflection, it believed that public interest payphones should not be added to the definition of basic telephone service since a revision of the entire rule is underway and it may be appropriate to address this question in another proceeding. All of the other commentors stated that proposed Rule 4 CCR 723-2-17.1.9 should not be adopted. It is found and concluded that public interest payphones should not be added to the definition of basic telephone service. The proposed addition at 4 CCR 723-2-17.1.9 will not be adopted.

D. The proposal for 4 CCR 723-2-23, Availability of Public Interest Payphones, includes the recommendation to delete the current Rule 23 in its entirety and replace it with Alternative A or B. Alternative A (the Iowa model) would make communities and payphone providers responsible for the placement and provision of

public interest payphones without participation by this Commission. This model would encourage communities to contract and compensate payphone providers who locate public interest telephones in the communities. This proposal would involve possible Commission regulation only in the event that complaints were filed against regulated payphone providers. No rule would be required under this Alternative A, rather the Commission could exercise this option in an order rather than in a rule. The proposal under Alternative B would require considerable Commission involvement ensuring that public interest payphones are provided. Alternative B requires that each provider of last resort would be required to provide public interest payphones in each wire center service area, or one public interest payphone per 25,000 residential customers in a wire center service area, whichever would be the greater number of payphones. The proposed Alternative B would require specifics concerning service such as a dial tone without the necessity of inserting coins in order to reach 911, lighting, and other requirements. It would also provide that payphones must be located where there are no payphones, maximum charge to customers, funding for reimbursement of losses, providers' eligibility to receive support under support mechanisms, reporting requirements to the Commission, and violations. Staff recommends that the Commission adopt Alternative B. Staff believes that although local communities should be encouraged to

participate in the placement of public interest payphones, the Commission should retain regulation of public interest payphones. Most of the other commentators recommend that the Commission adopt Alternative A. These commentators believe that the proposal of Alternative B, which would require only providers of last resort to provide public interest payphones, is not competitively neutral, and inconsistent with the Telecommunications Act of 1996 and the FCC Report and Order. CTA commented that if the Commission chooses to adopt Alternative B, substantial modification would be needed. It is found and concluded that the market-based, competitively neutral approach of Alternative A should be adopted in the provisioning of public interest payphones rather than the regulatory approach of Alternative B. Alternative A ensures competitive neutrality and comports more closely with the Telecommunications Act of 1996 and subsequent FCC rulings. If the Alternative A approach is adopted, this Commission would still have the ability to regulate public interest payphones in the event that it received complaints. U S WEST suggests that the following language be used by amending the third sentence of Alternative A as follows:

The Commission would regulate public interest payphones only if complaints are filed and verified that public interest payphones are not being provided where needed and the Commission has determined that semi-public service or a payphone otherwise under contract have been ruled out as valid options.

It is recommended that the Commission adopt Alternative A with the modification suggested by U S WEST, not as a rule, but as a policy statement in an order addressed to all government entities in the State of Colorado, payphone providers and other interested parties. The current Rule 23 is deleted in its entirety.

E. U S WEST believes that Rule 4 CCR 723-18.3.1.3 of the Rules Regulating Operator Services for Telecommunications Service Providers and Telephone Utilities should be deleted since it considers inmate services to be deregulated pursuant to ruling by the FCC. Staff, on the other hand, states that the rule concerns non-optional operator services and it should be retained in its present form. It is found that the rule should be retained.

F. Pursuant to § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. The proposed amendment to the Rules Regulating Telecommunications Service Providers and Telephone Utilities, 4 Code of Colorado Regulations 723-2, attached to this Decision is adopted.

2. The rules shall be effective 20 days after publication by the Secretary of State.

3. An opinion of the Attorney General of the State of Colorado shall be sought regarding the constitutionality and

legality of the rules contained in the attachment to this Decision.

4. The Commission Director shall file with the Office of Secretary of State for publication in *The Colorado Register*, a copy of the rules adopted by this Decision, and when obtained, a copy of the opinion of the Attorney General of the State of Colorado regarding the constitutionality and legality of these rules. The rules shall be submitted by the Commission's Director to the appropriate committee of reference of the Colorado General Assembly, if the General Assembly is in session at the time this Order becomes effective, or to the Committee on Legal Services, if the General Assembly is not in session, for an opinion as to whether the adopted rules conform with § 24-4-103, C.R.S.

5. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

6. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

7. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(SEAL)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

WILLIAM J. FRITZEL

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script, appearing to read "Bruce N. Smith".

Bruce N. Smith
Director

BASIS AND PURPOSE
FOR CHANGES

The basis and purpose for the proposed changes to 4 CCR 723-2 are:

- 1) To make the rules applicable in a multi-provider (multi-local exchange carrier) environment, and
- 2) to make the rules comport with the Federal Communications Commission's requirements concerning payphones.

The current rules were designed to apply in a monopoly environment instead of a multi-provider environment. In order to clarify the rules in a multi-provider environment, changes are necessary.

The Federal Communications Act of 1996 has preempted certain aspects of Colorado's regulation of payphones. The Federal Communications Commission, in interpreting the Federal Communications Act of 1996 establishes certain requirements for state utility commissions with respect to payphones and "Public Interest Payphones" (Report and Order 96-388 and Order on Reconsideration 96-439.) In order to comply with the preemptions in the Act and to comply with the Federal Communications Commission's requirements, changes to the rules are necessary.

4 CCR 723-2-2.37 --~~Public telephone service means an individual line service equipped with a coin collecting telephone instrument installed for the use of the general public in locations where the general public has access to these telephones~~

Public Interest Payphone - a payphone which (1) fulfills a public policy objective in health, safety, or public welfare, (2) is not provided for a location provider with an existing contract for the provision of a payphone, and (3) would not otherwise exist as a result of the operation of the competitive marketplace.